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NO. ~~05-1-03311-0~~

**COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Appellant

v.

ANDREW CHRISTIAN HENDRICKSON,
Respondent.

Appeal from the Superior Court of Pierce County
The Honorable Beverly G. Grant

No. 05-1-03311-0

RESPONDENT'S OPENING BRIEF

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A. RESPONDENT DOES NOT ASSIGN ERROR.

1. The Superior Court did not error when it dismissed this case.
2. The Superior Court did not error when it awarded costs to appellant Hendrickson.

B. ISSUES PRESENTED

1. Whether the trial court acted properly when it ruled that the State presented sufficient evidence to establish corpus delicti for the crime of driving under the influence of intoxicants.
2. Whether the State erred by eliciting testimony regarding defendant's statements prior to establishing the independent evidence required for corpus delicti and whether such error was harmless.
3. Whether the Superior Court erred when it assigned costs to defendant.

C. STATEMENT OF THE CASE.

1. Procedure

On February 28, 2005, Respondent Andrew Christian Hendrickson, hereinafter "defendant", was charged with one count of driving while under the influence of intoxicants. CP 11.

On June 6, 2005, the case was heard in Pierce County District Court. RP 1. (All of the references of the Report of Procedures are from

the trial transcript unless otherwise indicated). Defendant brought a pretrial motion to preclude Deputy Weigley and Trooper Ames from testifying as to their opinion of defendant's intoxication. RP 7. Defendant also requested that the State not elicit testimony regarding defendant's admissions of driving the vehicle until the State proved corpus delicti. RP 18.

At trial, over defendant's repeated objections, the State elicited testimony from both Deputy Wiegley and Trooper Ames that defendant admitted to drinking and driving the vehicle. RP 113, 157-59, 163, 168. The court found that the State met the minimum requirements of corpus to put the matter before the jury. RP 203. All of defendant's corpus delicti objections were overruled by the court. RP 1-236. The jury found defendant guilty of driving while under the influence of intoxicants. CP 11.

Defendant filed a notice of appeal. CP 1-2. On appeal, the defendant alleged that the (1) the court erred in allowing expert testimony on the effects of alcohol on a person, and (2) the court erred in allowing testimony regarding defendant's statements to be admitted before the State proved corpus delicti. CP 3-9.

On February 10, 2006, February 17, 2006, and February 24, 2006 and March 3, 2006, the parties appeared before Judge Grant. RP

(2/10/06), RP (2/17/2006), RP (2/24/2006), RP (3/3/2006). (The citations to the transcripts of the Superior Court actions on RALJ appeal will be to “RP,” followed by the date of the hearing). On March 3, 2006, Judge Grant reversed the trial court, dismissed the cause against defendant, and held that remand would undermine the corpus delicti rule. RP (3/3/06) 19. The Superior Court awarded defendant costs on appeal. CP 27-28.

A Notice for Discretionary Review was filed by the State on March 20, 2006. CP 32-38. The Court of Appeals granted the State’s motion for discretionary review. CP 39-41.

2. Facts

According to the testimony of Officer Weigley, on January 13, 2005 at approximately 1:30 in the morning, he came upon the scene of an accident on SR 302. He observed a dark object dart off the left shoulder of the road in front of the car in front of him, which swerved to miss it. As he got closer, he saw that the object was a person. RP 112. (All of the references to the Report of Procedures are from the trial transcript unless otherwise indicated). He claimed that he made contact with the dark object and the dark object was Mr. Hendrickson, the Respondent. When the officer went up to the Respondent, the Respondent got down on his hands and knees on the side of the road and was crying and stated that he had

crashed. Respondent complained of pain in his arm and wrists and officer called for aid. No car was visible and there was no probable cause to believe that Respondent was driving a motor vehicle. RP 113. Officer testified that he did not see the vehicle because it was in the bottom of a little ravine by the creek. RP 114. The officer testified that the car was not visible from the roadway. RP 115. The officer answered that he did not have independent knowledge that Respondent was the driver of the vehicle. RP 117.

According to Trooper Ames testimony, he came into contact with the defendant during an investigation of a motor vehicle collision. RP 122. He was advised by the State Patrol Communications of a collision on State Route 302 and that there was a deputy at the scene requesting contact. RP 122. When he arrived on the scene of the accident, there were a number of medical vehicles, ambulance and fire truck at the scene along with the county deputy vehicle. When asked if he had seen a vehicle that had been in a collision, he responded that he had. He testified that the vehicle was off the north side of the roadway down an embankment. The vehicle appeared to have left the roadway and gone through some bushes and hit some small trees and went down the steep embankment. RP 123. He first came into contact with defendant inside the ambulance and confirmed

defendant's identity with the Washington State Driver's License. RP 124.

When asked if he had determined that the defendant was the driver of the vehicle observed over the embankment, trooper answered that he noticed that there were keys in the ignition and the vehicle was registered to defendant. RP 124-126. He started investigating the collision by asking defendant how he became injured and into the back of the ambulance. RP 124. Objections were made by defense counsel. RP 124-128.

Trooper Ames interviewed defendant while he was in the ambulance to try to learn what had happened RP 157. Based on Trooper Ames's observations of defendant during his interview, Trooper Ames placed defendant under arrest for driving a motor vehicle while under the influence of an intoxicating liquor and/ or drug. No field sobriety test was conducted. RP 164, RP 166.

Registration Document:

The State offered up a registration document for a vehicle with a date of sale of 2-9-05. RP 129, RP 130-132. Trooper Ames was asked by defense counsel whether he had the document in his possession on the date of the vehicle collision and Trooper Ames testified that he did not have that part of the document in his had. RP 126, RP 127. There was confusion regarding the document. The State said that it was proof that the vehicle

was registered to defendant. Defense counsel stated that proof indicated that it wasn't registered to him until two weeks after the incident. The judge stated that all he could say was something says vehicle 2-9-05. RP 130, RP 131. The judge stated that it (referring to the registration document) did not indicate who the vehicle was sold to or sold by. "It just says sold in that column and I – and that's all I know about it. The judge did not allow the document to come in at that point. RP 132. Defense counsel stated that there was no proof that the prosecutor called DOL to obtain information that the vehicle was registered to Respondent. RP 131. Trooper Ames determined that the defendant was the registered owner of the vehicle by a computer in his patrol car that's linked through the radio system to the Washington State Department of Licensing database. Defense counsel objected stating that the information could not be used because it is hearsay and it is not reliable. RP 134, RP 135.

D. ARGUMENT

1. THE TRIAL COURT ACTED IMPROPERLY WHEN IT RULED THAT THE STATE PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH CORPUS DELICTI FOR THE CRIME OF DRIVING UNDER THE INFLUENCE OF INTOXICANTS.

Well-settled case law requires that the corpus delicti rule be followed. The Supreme Court in *State v. Ray*, 130 Wn.2d 673, 677, 926

P.2d 904 (1996), noted that if it abandoned the corpus delicti rule, it would have to overrule nearly 100 years of well-settled case law.

“In Washington, a confession, standing alone, is insufficient to establish the corpus delicti of a crime.” *State v. Smith*, 115 Wn.2d 775, 781, 801 P.2d 975 (1990). The corpus delicti rule provides that the confession of a person charged with the commission of a crime is not sufficient to establish the corpus delicti [body of the crime], but if there is independent proof thereof, such confession **may then** be considered in connection therewith and the corpus delicti established by a combination of the independent proof and the confession. *State v. Smith*, 115 Wn.2d at 781; *See State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996). The independent proof or evidence need not be of such a character as would establish the corpus delicti beyond a reasonable doubt, or even by a preponderance of the proof. It is sufficient if it prima facie establishes the corpus delicti. Prima facie meaning evidence of sufficient circumstances which would support a logical and reasonable inference of the facts sought to be proved. *Id.* at 782, citing *Bremerton v. Corbett*, 106 Wn.2d 569, 574, 75, 723 P.2d 1135 (1986).

The corpus delicti is usually proven by two elements: an injury or loss and someone’s criminal acts as the cause thereof. *State v. Smith*, 115

Wn.2d at 782.

While the corpus delicti of most crimes does not involve the issue of identity, the corpus delicti for the offense of driving while under the influence of intoxicating liquor requires evidence that the offender operated or was in actual physical control of a vehicle while he was under the influence of intoxicating liquor. *State v. Hamrick*, 19 Wn. App. 417, 418, 576 P.2d 912 (1978).

Under the corpus delicti rule, the court may not consider a defendant's confession or admissions unless the State has established the corpus delicti through independent proof. *State v. Ray*, 130 Wn.2d 673, 679, 926 P.2d 904 (1996), citing *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). Defendant's confession must be corroborated by independent evidence. *State v. McConville*, 122 Wn.App. 640, 94 P.3d 401 (2004).

The corpus delicti rule "controls the admission of a confession by prohibiting a court or jury from considering that confession unless the State offers independent, prima facie, corroborative evidence of the crime." *State v. McConville*, 122 Wn. App. at 648, citing *State v. C.D.W.*, 76 Wn. App. 761, 763, 887 P.2d 911 (1995); *State v. Aten*, 130 Wn.2d 640, 656, 927 P.2d 210 (1996); *State v. Dyson*, 91 Wn. App. 761, 763, 959 P.2d 1138

(1998). (Emphasis ours). Corroborating evidence must support a reasonable and logical inference that accused committed a criminal act. *See State v. McConville*, 122 Wn. App. at 650.

“The corpus delicti must be shown by some independent evidence **before the admissions of the defendant may be utilized**, but when such independent evidence is adduced, the admission may be considered in combination with the other facts to establish the defendant’s guilt beyond a reasonable doubt.” *State v. Hamrick*, 19 Wn. App. 417, 420, 576 P.2d 912 (1978). (Emphasis ours).

If there is insufficient evidence necessary to logically and reasonably deduct that the defendant was driving a car while under the influence of the intoxicating liquor, the defendant’s admission or confession is not to be considered to establish the corpus delicti (the body of the crime). *See State v. Hamrick*, 19 Wn. App. at 417, 420.

In *State v. Hamrick*, a state patrol officer investigated a 2-car accident and as a result of that investigation the defendant Hamrick was charged with driving while under the influence of intoxicating liquor. The issue on appeal was whether the State’s evidence satisfactorily established that defendant was driving or was in actual physical control of a vehicle. The State’s evidence primarily consisted of the investigating officer’s

testimony that when he arrived at the scene of the accident he found a pickup truck in a ditch and a car 200 feet west of the pickup. The officer testified that when he contacted the defendant in the center of the roadway and after a discussion occurred between the two, defendant admitted he had been driving the car. The officer was unable to ascertain whether the defendant owned either of the two vehicles involved in the accident. *State v. Hamrick*, 19 Wn. App. at 417-418. The Court of Appeals affirmed the dismissal because the State's evidence, exclusive of the defendant's admissions, established only that the defendant was present when the officer arrived at the scene of the accident but there was no independent evidence or inference connecting the defendant with control of the car. *Id.* at 420. The Court reasoned that because there was not sufficient evidence (evidence necessary to logically and reasonably deduct that the defendant was driving the car) to allow consideration of defendant's admissions, the State failed to establish the corpus delicti. *Id.* at 420.

Our case is similar, the State did not establish who was driving the vehicle nor did the officer see the vehicle because it was at the bottom of a little ravine. (RP 114). The State had failed to prove corpus delicti prior to proving who operated the motor vehicle.

The corpus delicti rule was established by the courts to protect a

defendant from the possibility of an unjust conviction based upon a false confession alone. *Bremerton v. Corbett*, 106 Wn.2d 569, 577, 723 P.2d 1135 (1986). “It arose from judicial distrust of confessions generally, coupled with recognition that juries are likely to accept confessions uncritically. This distrust stemmed from the possibility that the confession may have been misreported or misconstrued, elicited by force or coercion, based upon mistaken perception of the facts or law, or falsely given by a mentally disturbed individual. *Id.* at 577. The corpus delicti rule was established to prevent not only the possibility that a false confession was secured by means of police coercion or abuse but also the possibility that a confession, though voluntarily given, is false. *Id.* at 577. Allowing confession prior to adducing independent evidence would defeat the purpose of the corpus delicti rule.

In the present case, the Trial Court acted improperly when it ruled that the State presented sufficient evidence to establish corpus delicti for the crime of driving under the influence of intoxicants. The State failed to present sufficient independent evidence that defendant was driving when he was arrested for driving under the influence of intoxicants.

Established case law provides that there must be some independent evidence before the admission of the defendant may be

utilized. *See State v. Hamrick*, 19 Wn. App. 417, 420, 576 P.2d 912 (1978). The corpus delicti rule “controls the admission of a confession by prohibiting a court or jury from considering that confession unless the State offers independent, prima facie, corroborative evidence of the crime.” *See State v. McConville*, 122 Wn. App. at 648, citing *State v. C.D.W.*, 76 Wn. App. 761, 763, 887 P.2d 911 (1995); *State v. Aten*, 130 Wn.2d 640, 656, 927 P.2d 210 (1996); *State v. Dyson*, 91 Wn. App. 761, 763, 959 P.2d 1138 (1998).

Driving is an inherent element of the crime of driving under the influence which is prohibited under RCW 46.61.502. The State failed to establish that the defendant was driving a vehicle while under the influence of intoxicating liquor. Thus, the Superior Court’s dismissal of the charges against defendant was proper and such ruling was not contrary to established case law.

Moreover, the corpus delicti rule was established by the courts to protect a defendant from the possibility of an unjust conviction based upon a false confession alone. The rule arose from the judicial distrust of confessions generally, coupled with the recognition that juries are likely to accept confessions uncritically. It was established to prevent not only the possibility that a false confession was secured by means of police coercion

or abuse but also the possibility that a confession, though voluntarily given, could be false. *See Bremerton v. Corbett*, 106 Wn.2d 569, 577, 723 P.2d 1135 (1986). Thus, to allow a confession or admission by defendant prior to establishing some independent, prima facie, corroborative evidence of the crime would defeat the purpose of the establishment of the corpus delicti rule. In the present case, the Trial Court's ruling that the State presented sufficient evidence to establish corpus delicti for the crime of driving under the influence was improper.

2. IF THE STATE DID ERR BY ELICITING TESTIMONY REGARDING DEFENDANT'S STATEMENTS PRIOR TO ESTABLISHING THE INDEPENDENT EVIDENCE REQUIRED FOR CORPUS DELICTI, SUCH ERROR WAS NOT HARMLESS.

A harmless error is an error which is trivial, formal, or merely academic, was not prejudicial to the substantial rights of the defendant, and in no way affected the final outcome of the case. *State v. Thacker*, 94 Wn.2d 276, 283, 616 P.2d 655 (1980).

Where the error is from violation of an evidentiary rule rather than a constitutional mandate, the improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

In the present case, the error of eliciting testimony regarding defendant's statements prior to establishing the independent evidence required for corpus delicti, was not harmless. Here, driving is an inherent element of the crime of driving under the influence which is prohibited under RCW 46.61.502. The State failed to establish that the defendant was driving a vehicle when he was arrested for driving while under the influence of intoxicating liquor. To allow a confession or admission by defendant prior to establishing some independent, prima facie, corroborative evidence of the crime is not harmless.

3. BECAUSE THE COURT DID NOT ERR IN DISMISSING THE CASE, THE SUPERIOR COURT'S ORDER ASSIGNING COSTS TO DEFENDANT WAS NOT IN ERROR.

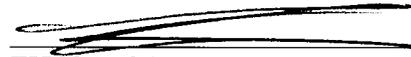
The party who substantially prevails on appeal shall be awarded costs on appeal. RALJ 9.3(a). Defendant prevailed on appeal and thus the award of costs on appeal was not in error. The Superior Court properly dismissed this case and thus its order should not be vacated.

E. CONCLUSION

The defendant respectfully requests this Court to uphold the

Superior Court's ruling dismissing this case and defendant's conviction.

Respectfully Submitted this 5 day of January 2006


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Attorney for Respondent

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CERTIFICATE OF DELIVERY

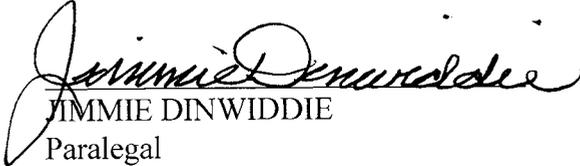
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The undersigned certifies under penalty of perjury under the laws of
the State of Washington, that on the below date, I mailed or caused
delivery of a true copy of Respondent's Opening Brief to:

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by ABC Legal Services

DATED this 5th day of December, 2005.


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Paralegal